

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

<b>COMMONWEALTH OF VIRGINIA</b>	)	<b>CRIMINAL NUMBER FE-2017-1245</b>
<b>VERSUS</b>	)	
<b>DARWIN MARTINEZ TORRES</b>	)	<b>INDICTMENT - CAPITAL MURDER</b>

**ORDER FROM AUGUST 31, 2018 HEARING**

On August 31, 2018, Robert McClain and Casey Lingan, the Assistant Commonwealth's Attorneys, DARWIN MARTINEZ TORRES, the Defendant, Daniel Goldman, Joseph Flood, and Joni Robin, Counsel for the Defendant, and Lindsay Wilhelm and Jaime de Castellvi, Interpreters fluent in the Spanish language, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER IN THE COMMISSION OF ABDUCTION (COUNT I), ABDUCTION (COUNT II), CAPITAL MURDER IN THE COMMISSION OF RAPE (COUNT III), RAPE (COUNT IV), CAPITAL MURDER IN THE COMMISSION OF OBJECT SEXUAL PENETRATION (COUNT V and COUNT VII) and OBJECT SEXUAL PENETRATION (COUNT VI and COUNT VIII) and he appeared while in custody.

This case came before the Court this date for argument on the Defense motions #61, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79 and for a review of the status of Kevin Alexander Cardona Torres, a material witness in this case.

The Court was advised that the subpoena *duces tecum* requested in Defense #68, Subpoena *Duces Tecum* to Loudoun County Department of Family Services, had already been issued by the Clerk's Office. Counsel for the Defendant moved the Court to issue a protective order for the records returned. The court clerk advised the Court that the records returned to the Clerk's Office on a subpoena *duces tecum* are not available to the public, only to the parties of the case; it was determined that a protective order was unnecessary.

Defense #75, Subpoena *Duces Tecum* to Virginia Department of Corrections, has been issued by the Clerk's Office and does not need to be addressed by the Court at this time.

Kevin Alexander Cardona Torres, a material witness in this case, and Che Rogers, his Counsel, were present in the courtroom. The Court heard argument on Defense #61, Defendant's Motion to Take Pretrial

Testimony of Material Witness Kevin Torres. Counsel for the material witness then advised that the witness is willing to remain in custody so that he is available to appear as a witness in this case. In consideration, the Court maintained the material witness warrant. The witness was remanded to the custody of the Sheriff and his attorney was excused.

The Court **granted** Defense #77, Motion for Writ of Habeas Corpus *Ad Testificandum*, without objection by the Commonwealth's Attorney. The Court entered a Writ of Habeas Corpus *Ad Testificandum* to Farmville Detention Center for witness Juan Torres Martinez.

The Court, without objection by the Commonwealth's Attorney, **granted** Defense #73 Motion to Authorize Funds for Additional Security and Logistics Support Required For Attorney Travel to El Salvador, by separate order.

The Court, after hearing argument, **denied** Defense #74, Motion to Designate Ex Parte Judge (Defense Expert Number Four), without prejudice, for the reasons stated on the record.

The Court **denied, without prejudice**, Defense #67, Defendant's motion to Compel the Prosecution to Disclose Jailhouse Informant Cooperation, Information, and Testimony as moot, based upon the representations of the Commonwealth's Attorney. After hearing argument, the Court **ORDERED** that, in the event that the Commonwealth learns that there is an informant with information that they might or might not call as a witness, they shall notify the Defense of the existence of the informant within two (2) weeks, but are not required to name the individual at that time.

The Court, without objection by the Commonwealth's Attorney, **granted**, by separate order, Defense #76, Motion for a Material Witness Order for Juan Torres Martinez.

The Court instructed counsel that argument on the next motions would proceed as much as could be addressed in open court, as the matters involved information previously placed under seal. The Court suggested that further argument could be reserved for the time period after the potential jurors had been admonished to avoid exposure to information about this case but before voir dire commences. Counsel agreed.

After hearing argument, the Court **denied** Defense #69, Motion to Exclude Allegations of Unadjudicated Juvenile Misconduct from Capital Trial or Sentencing, for the reasons stated on the record.

Defense Motion #71, Motion to Compel Discovery, was treated as resolved.

The Court, after hearing argument, **denied** Defense #72, Motion for Bill of Particulars (Unadjudicated Criminal Conduct), for the reasons stated on the record.



The Court heard argument on Defense #70, Motion to Strike the Commonwealth's Notice of Intent to Introduce Evidence of Unadjudicated Conduct. The Court **denied** the motion, with the understanding that the Commonwealth will file, **under seal**, a final notice, responsive to § 19.2-264.3:2, and with no new unadjudicated criminal conduct, on or before September 7, 2018. Any responsive pleadings shall also be filed **under seal**. After hearing further argument, the Court **denied** the Defense motion to strike alleged unadjudicated criminal conduct that is not violent, for the reasons stated on the record.

After hearing argument, the Court **denied** Defense #78, Motion for Disclosure of Information Regarding Comparable Capital Cases Pursuant To Virginia Code § 17.2-313(E). The motion was denied without prejudice. It may be renewed in the event the jury were to determine that the death penalty should be imposed.

The Court, after hearing argument, **denied** Defense #79, Motion to Bar the Death Penalty Because Virginia's Proportionality Review is Unconstitutional on its Face, for the reasons stated on the record.

The Court instructed Counsel to make a filing, two (2) weeks prior to the September 27, 2018 motions' hearing, which addresses the number of jurors to be summoned and the mechanics and logistics of the various phases of the jury selection procedure, to include a proposed questionnaire if time permitted. The parties will then have one (1) week to file a response.

Counsel for the Defendant advised the Court that the name and curriculum vitae of the proposed attorney for Defense #62, Motion for Appointment of an Immigration Attorney to Assist the Defense in Obtaining and Maintaining Foreign National Witnesses, would be submitted shortly.

The Defendant was remanded to the custody of the Sheriff.

Entered on September 6, 2018.



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JUDGE RANDY I. BELLOWES